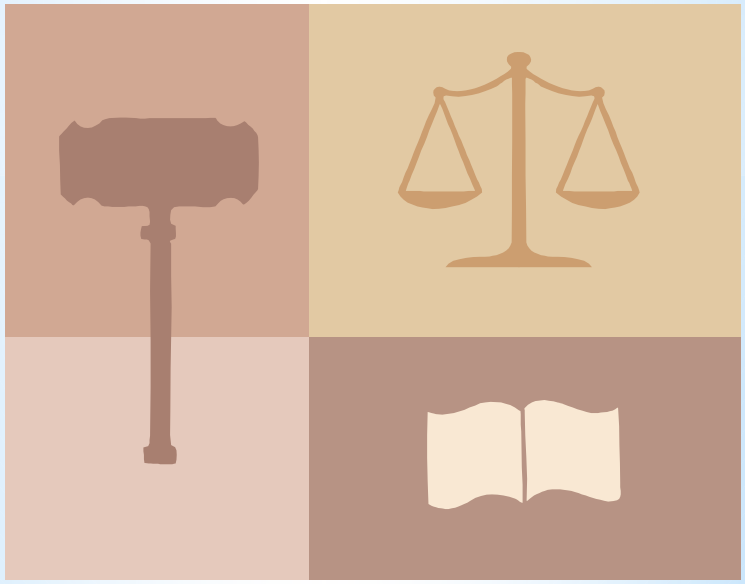
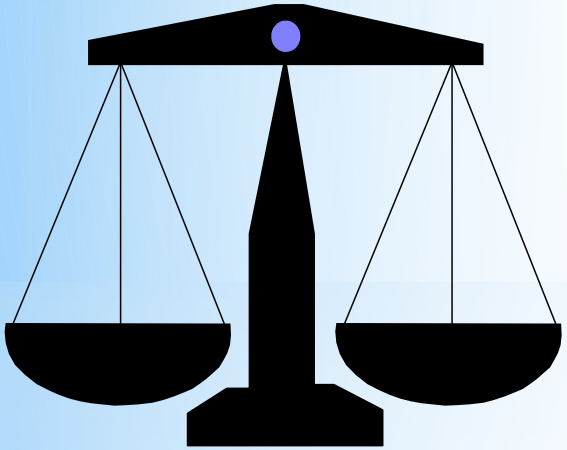
NAVAL EDUCATION AND TRAINING COMMAND
FLEET READINESS STARTS HERE

* INDIVIDUAL DISCRIMINATION COMPLAINT PROCESSING PROCEDURES UNDER 29 CFR 1614



* DISCRIMINATION COMPLAINT PROCESSING PROCEDURES



* TRAINING OBJECTIVE

* LAWS

* RESOURCES

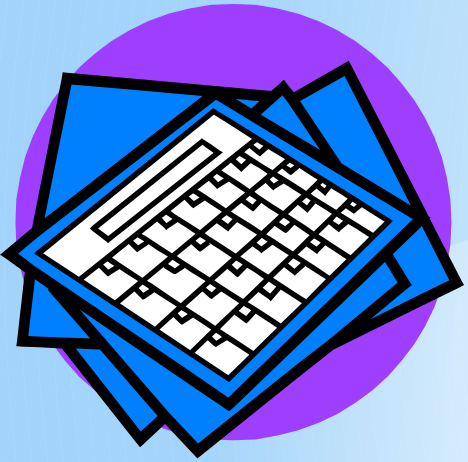
* TRAINING OBJECTIVE

* To provide employees with an understanding of the complaint processing procedures and how to fi complaint of discriminati

*APPLICABLE LAWS

- *Title VII of the Civil Rights Act of 1964, or Title VII - prohibits discrimination on the basis of race, color, religion, sex or national origin.
- *Rehabilitation Act of 1973, amended - requires Federal agencies to provide reasonable accommodation to qualified employees and applicants with disabilities, unless to do so would cause undue hardship on the agency.
- *Age Discrimination in Employment Act - prohibits discrimination against individuals who are 40 years of age or older.
- *Equal Pay Act - prohibits gender discrimination in payment of wages for work requiring equal skills, effort and responsibility and performed under similar working conditions.
- *Each act also prohibits retaliation for participation in the Equal Employment Opportunity (EEO) process and opposition of discriminatory practices.

* INFORMAL/PRE-COMPLAINT PROCESSING



* Contact - Individuals wishing to file an EEO complaint under 29 CFR 1614 must consult with an EEO counselor within **45 calendar days** of the incident or, in the case of a personnel action, within **45 calendar days** of the effective date of the action.

* INFORMAL/PRE-COMPLAINT PROCESSING

* Counseling - The EEO counselor has **30 calendar days** from the date the Complainant's rights are discussed to counsel the Complainant unless alternative dispute resolution is used. Then the informal process will be extended for a period of up to 90 days. If the Complainant is not satisfied with the resolution or resolution has not been reached during the informal process, the EEO counselor shall provide the Complainant a final interview which shall include notifying the Complainant, in writing, of the right to file a formal complaint of discrimination.

INFORMAL/PRE-COMPLAINT PROCESSING

ge Discrimination in Employment Act (ADEA) - Employees ith claims of discrimination under the ADEA may proceed irectly to the Federal Court. The only requirement before roceeding to Court is that the employee must give the EEOC t least 30 days' notice of intent to file a complaint in the .S. District Court. This notice must be given within 180 ays of the alleged discriminatory action or practice. mployees may file an informal complaint; however, the mployee must exhaust the administrative remedies. The mployee may not seek relief in the U.S. District Court until he complaint has been pending with the agency for at least 80 days.

* INFORMAL/PRE-COMPLAINT PROCESSING

The notification, either called a Notice of Final Interview or Notice of Right to File, will contain a formal complaint form for the Complainant to fill out if he/she chooses to pursue his/her complaint. Formal complaints must be filed within **15 calendar days** of receipt of the written Notice prov counselor.

* INFORMAL/PRE-COMPLAINT PROCESSING

* Filing - The formal complaint of discrimination must include information about the claims counseled and must be sufficiently precise to identify the actions or practices that form the basis(es) of the complaint. Complainants may amend a complaint with issues or claims "like or related" to the original complaint prior to conclusion of the investigation, or, after requesting a hearing, add issues or claims by filing a motion to amend the complaint with the Administrative Judge assigned to conduct the hearing.

* INFORMAL/PRE-COMPLAINT PROCESSING

*Amendment - When amendments are made after a formal complaint has been filed, the EEO counselor provides a written report to the Complainant which includes a description of the claim(s) and basis(es) that were presented by the Complainant during the pre-complaint counseling process, pertinent documents gathered and any resolution attempts

* FORMAL COMPLAINT PROCESSING

* Acceptance/Dismissal. The Deputy EEO Officer will either accept or dismiss the formal complaint.
  * Acceptance and Investigation. If the complaint is accepted, arrangements will be made for an investigator from outside of the activity to conduct the investigation. The investigator is responsible for developing an impartial and appropriate factual record upon which findings on the claims raised in the complaint can be made. The investigation must be completed within 180 calendar days of the filing of the formal complaint.

* FORMAL COMPLAINT PROCESSING

* If the investigation is not completed within 180 days, the Complainant may request an Equal Employment Opportunity Commission (EEOC) hearing before an Administrative Judge or file a civil action in Federal District Court. Once the investigation is completed, the Complainant will receive a copy of the report of investigation and be notified of his/her right to request a hearing. If no hearing is requested, after 30 calendar days, the complaint will be forwarded to the Department of the Navy for a final agency decision.

* FORMAL COMPLAINT PROCESSING

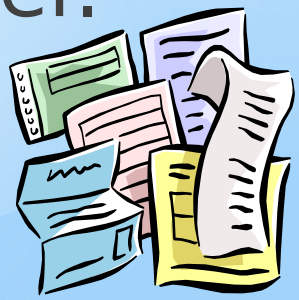
Procedural Dismissal & Appeal Rights. If the complaint is dismissed, the Complainant will be notified, in writing, of the reasons for the dismissal. Agencies may dismiss a complaint up to the time that the Complainant requests a hearing.

* FORMAL COMPLAINT PROCESSING

Partial dismissals. If a portion of the complaint (some but not all of the claims addressed in the complaint) is dismissed, the Complainant has no immediate right to appeal the dismissed claims. If a hearing is requested, an Administrative Judge will review the dismissed claims. A Complainant may appeal the dismissed claims only after a final action has been taken by the agency on the remainder of the complaint.

* FORMAL COMPLAINT PROCESSING

- Dismissal of complaint. If the entire complaint is dismissed, and the Complainant is not satisfied with the reasons given, within **30 calendar days** of receipt of the dismissal he/she may appeal the dismissal to EEOC. The Complainant will be provided appeal rights and an appeal form along with the dismissal letter.



* FORMAL COMPLAINT PROCESSING

*Hearing. Within **30 calendar days** of receipt of the investigative file, the Complainant may request a hearing before an EEOC Administrative Judge (AJ). The Complainant must submit the request in writing to the appropriate EEOC office having jurisdiction over the geographic area where the complaint arose. The AJ becomes responsible for the adjudication of the complaint during the hearing stage. The AJ shall issue a decision on the complaint, and shall order appropriate remedies and relief where discrimination is found. The decision is then forwarded to the Department of the Navy for final action.

* FORMAL COMPLAINT *PROCESSING*

Final Action. There are two types of final

actions which can be done by the Department of the Navy:

1. A final order after a hearing has been held;

2. Or a final agency decision when no hearing was held.

* FORMAL COMPLAINT PROCESSING

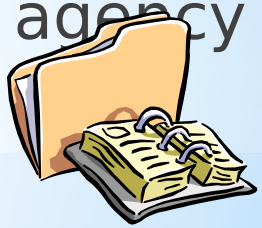
1. <u>Final Order by the Agency</u>. When a hearing has been held, the Department of the Navy (DON) must issue a final order within 40 calendar days of the date it receives the AJ's decision. The final order states whether DON will fully implement (without modification) the AJ's decision. If the DON chooses not to implement the AJ's decision in it's entirety, the DON shall issue a final order and file an appeal with the EEOC simultaneously. If the DON does not issue a final order within 40 calendar days, the AJ's decision becomes the final action of the agency. The Complainant will receive his/her right to appeal to the EEOC or file a civil action in Federal District Court.

* FORMAL COMPLAINT PROCESSING

2. <u>Final Agency Decision</u>. If a Complainant requests an immediate final agency decision without a hearing or a hearing request is not received from the Complainant, the complaint will be forwarded to the Department of the Navy for a final agency decision. Final agency decisions must be issued within 60 calendar days of receipt of the Complainant's request for a decision without a hearing, or if no response was received from the Complainant within 60 calendar days of the 30-day period for the Complainant to request a hearing, or an immediate final decision without a hearing. When an agency dismisses a complaint in its entirety under 29 CFR 1614.107, this is also considered a final agency decision. Like a final order, a final agency decision will also contain the Complainant's right to appeal the decision to the EEOC and the right to file a civil action in Federal District Court.

* FORMAL COMPLAINT PROCESSING

* Appeals. Complainants who do not agree with the dismissal of their complaint under 29 CFR 1614.107, the final order or final agency decision of the DON, and wish to file an appeal with the EEOC, must do so within **30 calendar days** of receipt of the dismissal, final order or final agency decision. Appeal rights, forms and the appropriate address for filing the appeal will be provided to the Complainant at the time of dismissal, final order or final agency decision.



* FORMAL COMPLAINT PROCESSING

* Civil Actions. Complainants who filed a complaint under Title VII, the Age Discrimination in Employment Act, or the Rehabilitation Act are authorized to file a civil action in an appropriate United States District Court: (1) within **90 calendar days** of the receipt of the final agency decision if no appeal has been filed; or (2) within **180 calendar days** from the date the complainant filed a formal complaint if an appeal has not been filed and final action has not been taken; or (3) within **90 calendar days** of the receipt of the EEOC decision on appeal; or (4) after **180 days** from the date of filing an appeal with the EEOC if no EEOC decision on the appeal has been issued.

* INFORMAL/PRE-COMPLAINT PROCESSING
Exercise # 1

- **The Laws enforced by the EEOC prohibit discrimination on the bases of race, color, religion, sex, age, disability and …**

a. Marital status
b. None of these
c. Income
d. National origin

(Answer: d. National origin)

* INFORMAL/PRE-COMPLAINT PROCESSING
Exercise # 2

***Which of the following is or are required of an EEO Counselor during the pre-complaint phase of the EEO process?**

a. Informing the aggrieved person of his or her right to request a hearing.

b. Identifying the applicable administrative and court time frames.

* INFORMAL/PRE-COMPLAINT PROCESSING Exercise # 2 (Continued)

c. Informing the aggrieved person of his or her duty to keep the agency and the commission informed of his or her current address.

d. Informing the aggrieved person of the fact that only the claims raised during counseling or issues or claims that are like or related to those raised during counseling may be raised in a formal complaint to the agency.

e. All the above.

(Answer: e. All the above)

* FORMAL COMPLAINT Exercise # 3

***What are the steps in the EEO process?**

a. Seek counseling with an EEO Counselor.

b. Contact must be made within 45 calendar days of the alleged incident.

c. The EEO Counselor has 30 calendar days to provide advice on the EEO process, conduct a limited inquiry into the allegations, and seek to resolve the matter at the lowest level.

* FORMAL COMPLAINT
Exercise # 3
(Continued)

d. May elect to extend counseling up to 60 calendar

days if the issues are not resolved within 30 calendar days.

e. The EEO Counselor gives the individual a notice of

right to file a formal EEO complai

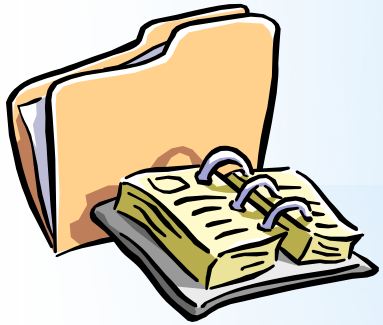
f. All the above.

(Answer: f. All the above)

* FORMAL COMPLAINT
Exercise # 4

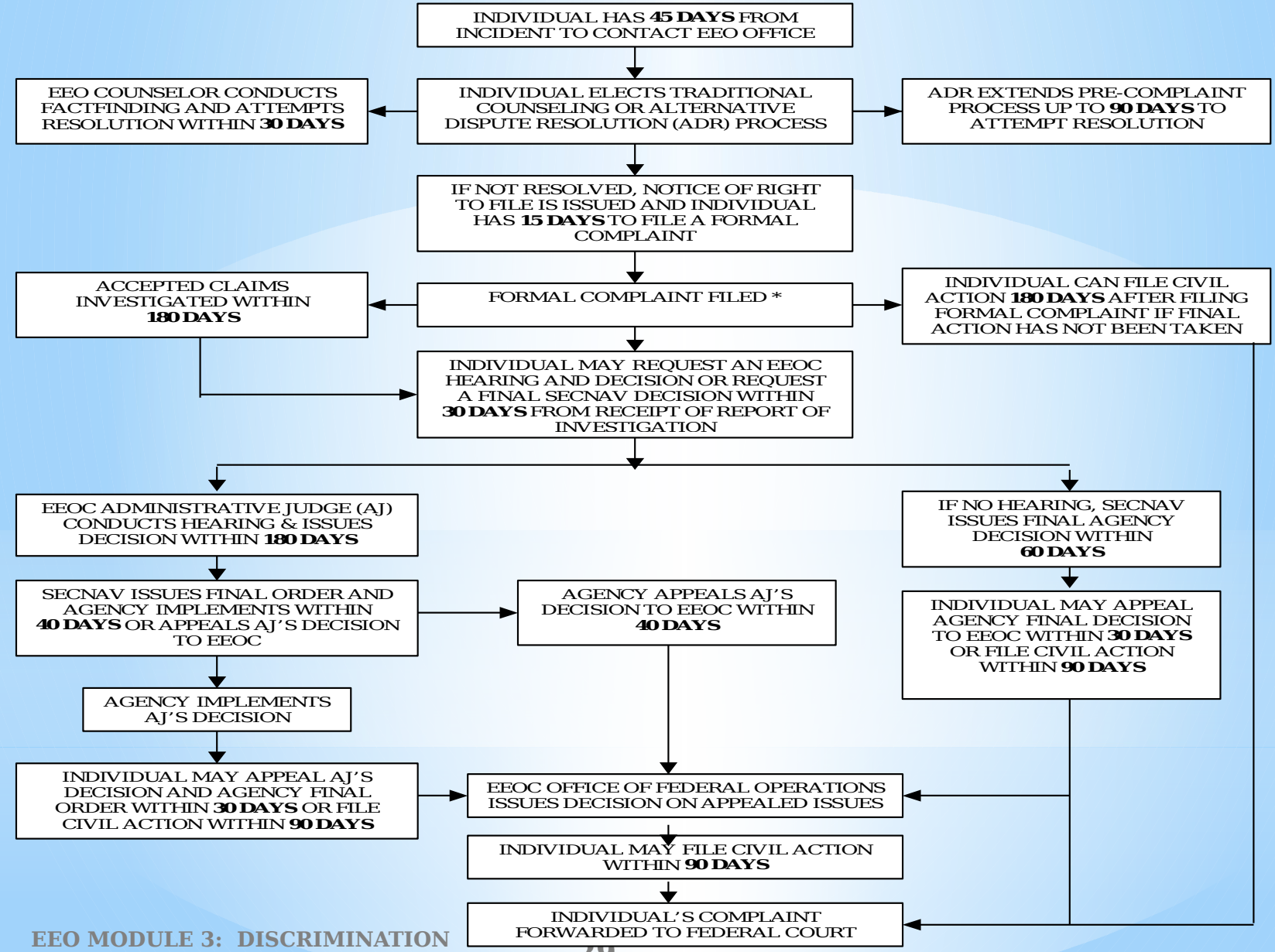
***Within how many days must a complaint be filed after the complainant or his/her attorney receives the notice of right to file a complaint?**

a. 15 days
b. 30 days
c. 21 days



(Answer: a. 15 days)

INDIVIDUAL DISCRIMINATION COMPLAINT PROCESS


INDIVIDUAL HAS **45 DAYS** FROM INCIDENT TO CONTACT EEO OFFICE
EEO COUNSELOR CONDUCTS FACTFINDING AND ATTEMPTS RESOLUTION WITHIN **30 DAYS**
INDIVIDUAL ELECTS TRADITIONAL COUNSELING OR ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCESS
ADR EXTENDS PRE-COMPLAINT PROCESS UP TO **90 DAYS** TO ATTEMPT RESOLUTION
IF NOT RESOLVED, NOTICE OF RIGHT TO FILE IS ISSUED AND INDIVIDUAL HAS **15 DAYS** TO FILE A FORMAL COMPLAINT
ACCEPTED CLAIMS INVESTIGATED WITHIN **180 DAYS**
FORMAL COMPLAINT FILED *
INDIVIDUAL CAN FILE CIVIL ACTION **180 DAYS** AFTER FILING FORMAL COMPLAINT IF FINAL ACTION HAS NOT BEEN TAKEN
INDIVIDUAL MAY REQUEST AN EEOC HEARING AND DECISION OR REQUEST A FINAL SECNAV DECISION WITHIN **30 DAYS** FROM RECEIPT OF REPORT OF INVESTIGATION
EEOC ADMINISTRATIVE JUDGE (AJ) CONDUCTS HEARING & ISSUES DECISION WITHIN **180 DAYS**
IF NO HEARING, SECNAV ISSUES FINAL AGENCY DECISION WITHIN **60 DAYS**
SECNAV ISSUES FINAL ORDER AND AGENCY IMPLEMENTS WITHIN **40 DAYS** OR APPEALS AJ'S DECISION TO EEOC
AGENCY APPEALS AJ'S DECISION TO EEOC WITHIN **40 DAYS**
INDIVIDUAL MAY APPEAL AGENCY FINAL DECISION TO EEOC WITHIN **30 DAYS** OR FILE CIVIL ACTION WITHIN **90 DAYS**
AGENCY IMPLEMENTS AJ'S DECISION
INDIVIDUAL MAY APPEAL AJ'S DECISION AND AGENCY FINAL ORDER WITHIN **30 DAYS** OR FILE CIVIL ACTION WITHIN **90 DAYS**
EEOC OFFICE OF FEDERAL OPERATIONS ISSUES DECISION ON APPEALED ISSUES
INDIVIDUAL MAY FILE CIVIL ACTION WITHIN **90 DAYS**
INDIVIDUAL'S COMPLAINT FORWARDED TO FEDERAL COURT

*Mediation may be used to reach resolution/settlement at any stage during the process. All days are calendar days.